

IN THE DISTRICT COURT TWO TAMALE
HELD ON MONDAY 31ST JULY, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A2/31/23

BETWEEN

YAHAYA ALHASSAN - **PLAINTIFF**
SUING PER HIS LAWFUL ATTORNEY IBRAHIM ALHASSAN

AND

SALIFU AFA ABDULAI - **DEFENDANT**

JUDGMENT

1. This judgment relates to land.
2. The plaintiff instituted this action per his lawful attorney Ibrahim Alhassan. Plaintiff is a Ghanaian but resident in the United Kingdom. The defendant is ordinarily resident in Tamale.

3. On 5th January, 2023 plaintiff took out this action against the defendant for the following:

- “a. Declaration that plaintiff is the owner of all that piece or parcel of land known as plot no. 139 situate and being at West Gurugu Block A bounded by plot nos. 140, 141 and 133 and particularly described in paragraph 3 of a lease dated 11th June, 2020 executed in plaintiff’s favour.
- b. An order of mandatory injunction on the defendant to pull down the structure he has erected on portions of plaintiff’s aforesaid plot.
- c. An order of perpetual injunction restraining the defendant, his agents, servants, assigns or persons claiming through them from interfering in whatever manner with the plaintiff’s possession, ownership and use of his plot as described herein above.
- d. Recovery of possession.
- e. Damages against the defendant for trespassing onto the land.
- f. Costs.”

4. The defendant filed a Defence on 8th February, 2023 refuting the plaintiff’s claim.

5. Parties filed survey instructions to which this court ordered for a survey report to be filed.

6. The case of either party is detailed below.

PLAINTIFF’S CASE

7. According to plaintiff’s lawful attorney, he was responsible for all the processes leading to purchase of plaintiff’s land. He averred that the plaintiff acquired the disputed plot in 2008 at which time the scheme area was known as Katariga Yapala

and was issued plot no. 197. He added that the defendant herein was the caretaker of the plaintiff's plot. He explained that it was the defendant who informed the plaintiff about the availability of the said plot. Plaintiff's lawful attorney averred that the scheme area was later changed to Katariga Residential Area and the plot was re-numbered as plot no. 134. Again, the area was rezoned as West Gurugu Residential and the same plot re-numbered as plot no. 139. He indicated that for all the changes, an allocation paper was issued to the plaintiff. He added that with this new allocation, the plaintiff then applied and was issued a building permit by the Sagnarigu Municipal Assembly. He contended that the defendant has encroached onto the plaintiff's land and that despite the involvement of the Tindan Paga and the Gulkpe Naa Palace, defendant will not cease interference on plaintiff's land. Hence, this present action.

8. The following exhibits were tendered in support of plaintiff's case:
 - a. Exhibit A – Copy of the Power of Attorney
 - b. Exhibit B – Copy of Plaintiff's Allocation Paper dated 19/9/01 for plot no. 134.
 - c. Exhibit C – Copy of Plaintiff's Allocation Paper dated 21/7/19 for plot no. 139 together with a site plan.
 - d. Exhibit D – Copy of the Plaintiff's Lease dated 11/6/20.
 - e. Exhibit E – Copy of the Building Permit dated 22/11/21.
9. The court rejected the plaintiff's allocation paper dated 19/9/08 for plot no. 197, since it was not the original and it had been altered/forged. Same was marked as Exhibit R. The plaintiff did not call any witness.

DEFENDANT'S CASE

10. According to defendant, he and the plaintiff worked at the University for Development Studies. He indicated that plot no. 139, West Gurugu Block A rather belongs to him. He indicated that he acquired the said plot from Zogbi-Na Imoro Neindoo in 1999 at which time when the area had not been schemed/demarcated. He submitted that the first allocation by the said Zogbi-Na the plot was designated as A Extension 51, Katariga Residential Area. He described his plot as sharing boundary to the north with one Hajia Alhassan Fati, to the south with plaintiff's plot, to the east with the Tamale-Kumbugu Main Road and to the west with plot no. 140 which also belongs to him. He contended that it was after he built his structure that he bought plaintiff's land for him. He added that on plaintiff's land is a storey building and that he (defendant) has not encroached onto any part of plaintiff's land. He contended further that the disputed plot does not fall under the jurisdiction of the Gurugu-Naa, despite the fact that the scheme area is Gurugu-West Residential Area.

11. The defendant tendered in evidence the following:

- a. Exhibit 1 – Copy of his Allocation Paper dated 19/2/99 for plot no. 139 together with a site plan.
- b. Exhibit 2 – An Allocation Letter for Plot No. A. Ext. 51.

Defendant's Witness

12. Defendant called a witness, Muktar Zakaria (DW1). According to him, he is the immediate neighbour of the defendant, i.e. sharing a boundary on the north of defendant's land. He added that he is the caretaker of his sister's (Hajia Alhassan Fati's) house. He explained the sister's house was initially designated as H/No. A 52, Katariga West, Tamale. He tendered in evidence, Exhibit 3 which is a Water Bill dated 30/11/22 and has the address as Plot 52, Katariga West, Tamale. His point is that the sister's house shares boundary with the defendant's house, nothing further.

COURT EXPERT WITNESS (CEW)

13. Surv. Mutaru Fuseini Adam, the court appointed surveyor filed his report on 19th May, 2023, and same marked as Exhibit CW1. His conclusions/observations were that:

- “a. The local plan of the area has been compromised as shown clearly on the composite plan attached.
- b. The parties are all contesting over the same plot (thus plot no. 139) as this is indicated on the allocation letters from the grantors/lessors.
- c. Each party has developed structure on the parcel of land in dispute.”

14. CEW was cross-examined by the parties herein. I shall consider in detail his evidence later in this judgment.

ISSUES FOR DETERMINATION

15. The issues borne out by the facts are:

- a. Whether or not plot no. 139 belongs to the plaintiff or the defendant?*
- b. Whether or not per the area hatched red on Exhibit CW1, the defendant has encroached onto plaintiff's plot or vice-versa?*

BURDEN OF PROOF

16. In civil cases, the general rule is that the party who in his pleadings raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression ‘burden of persuasion’ and in section 14 that expression has been defined as relating to, ‘each fact the existence or non-existence of which is essential to the claim or defence he is

asserting.’ See also ss. 11(4) and 12(1) and (2) of NRCD 323 and **Sarkodie v FKA Company Ltd. [2009] SCGLR 65.**

17. With regards to what is required of the plaintiff in land cases, the law is that he must succeed on the strength of his own case and not on the weakness of the defendant’s case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC.** In **Kodilinye v Odu [1935] 2 WACA 336**, the court puts it simply that, “in case of doubt, ...the party who asserts must lose.”

ANALYSIS OF THE ISSUE

Issues a and b

18. I shall look at the two issues together. Thus, (a) *whether or not plot no. 139 belongs to the plaintiff or the defendant* and (b) *whether or not per the area hatched red on Exhibit CW1, the defendant onto plaintiff’s plot?*

19. It is settled and trite law that a person claiming title has to prove (i) his root of title, (ii) mode of acquisition, and (iii) various acts of possession over the disputed land, see **Yehans International Ltd. v Martey Tsuru Family & Anor. [2018] DLSC 2488.** Similarly, the plaintiff must positively describe/identify the land and its boundaries. In **Anane v. Donkor [1965] GLR 188**, the Supreme Court held at holding 1 that, “...a claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land being the subject-matter of his suit.” The Supreme Court, however, in the case of **Nortey v. African Institute of Journalism and Communication [2013-2014] 1 SCGLR 703** held that such a description does not have to be mathematically certain or exact. A similar pronouncement was made by the Supreme Court in **Okine & Another v. Amoah VI [2013-2014] 2 SCGLR 1358** and in addition stated that the principle enunciated in **Anane v. Donkor [supra]** should not be slavishly applied.

20. Now, with regard to proof of one's claim or allegation, the Supreme Court in the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [2012] 2 SCGLR 845 at page 867** held as follows:

“...What this rule literally means is that if a person goes to court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish.”

21. Let me also rehash what was stated in **Majolagbe v. Larbi [1959] GLR 190** regarding proof of an allegation. The learned judge, Ollenu J. (as he then was) stated at page 192 that, “where a party makes an averment capable of proof in some positive way...and his averment is denied, *he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true*”. See also the case of **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139**.

22. It must be noted that per the authorities, the court is not bound by the surveyor's report, but it is only to help the court to come out with a reasoned decision. The court can thus, upon stated reasons, depart from the contents of the report as presented by the surveyor, see the cases of **Tetteh v. Hayford [2012] 1 SCGLR 417** and **Thomas Tata Atanley Kofigah & Anor. v Kofigah Francis Atanley & Anor. [2020] DLSC 8754**.

23. Based on the above, the legal burden is on the plaintiff to establish that the property in dispute belongs him, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) (supra)**. Failing which, an unfavourable ruling shall be entered against him. Where plaintiff succeeds, the burden then shifts to the defendant, see **Ababio v Akwasi III (supra)**. The plaintiff is to succeed on the strength of his own case and not on the weakness of the defendant, see **Kodilinye v Odu (supra)** and **Osei v Korang (supra)**.

24. In the instant case, the plaintiff maintained that plot no. 139 belongs to him and that same was acquired in 2008. The root of title according to the plaintiff's lawful attorney is that plaintiff acquired the disputed plot in 2008 at which time the scheme area was known as Katariga Yapala and was issued plot no. 197. The allocation paper for plot no. 197 was marked as Exhibit R. As indicated earlier, Exhibit R is not the original and had been altered or forged. Plaintiff's attorney submitted, however, that the Katariga Yapala scheme area was later changed to Katariga Residential Area and the plot was re-numbered as plot no. 134, see Exhibit B. Again, the area was rezoned as West Gurugu Residential and the same plot re-numbered as plot no. 139, see Exhibits C and D. He explained that it was the defendant who informed the plaintiff about the availability of the said plot. Plaintiff's lawful attorney admitted that the defendant herein was the caretaker of his plot. Again, he admitted that the defendant had built on his land way before the plaintiff bought or came to the land. However, he finds that the defendant has encroached onto the plaintiff's land. Unfortunately, he did not describe the nature or extent of defendant's encroachment.

25. The defendant, on his part, contended that plot no. 139, West Gurugu Block A rather belongs to him. He explained that he acquired the said plot from Zogbi-Na Imoro Neindoo in 1999, see Exhibit 1, at which time when the area had not been

schemed/demarcated. He submitted that the first allocation by the said Zogbi-Na, the plot was designated as A Extension 51, Katariga Residential Area, see Exhibit 2. He described the boundaries to the said land, as aforementioned in paragraph 10 of this judgment, and maintained he has not encroached onto plaintiff's land. He further submitted that he bought plaintiff's land for him, at which time he had already built on his land. DW1 added that his sister's plot is no. 52, Katariga West, Tamale which shares boundary with that of the defendant. He tendered in Exhibit 3, the water bill bearing the address, plot no. 52, Katariga West, Tamale.

26. From the evidence, it was apparent that plaintiff's root of title is lost, since his initial allocation paper, plot no. 197 was not the original and same forged/alterd. This court rejected same and marked it as Exhibit R. Yet, he has an allocation and lease for plot no. 139 together with a cadastral plan, see Exhibits C and D. From the evidence, the plaintiff's lawful attorney did not point out the nature or extent of encroachment by the defendant. Also, there were inconsistencies as to when plaintiff acquired his plot. Exhibits B, C and D are dated 2001, 2019 and 2020, respectively, yet plaintiff's lawful attorney kept referring to acquiring the plot in 2002/2003.

27. With regards to proof of title and the encroachment, below is an extract of what ensued when plaintiff's lawful attorney was under cross-examination:

"Q: How did you come about the plot, who informed you about its availability?

A: Defendant did.

...

Q: When did the plaintiff acquire his plot?

A: Sometime in 2002-2003.

Q: I am putting it to you that if you say plaintiff acquired this plot in 2002 and 2003, you are not being truthful to this court?

A: No. I am truthful.

Q: You agree with me that the defendant knows the boundaries of the plot than you in particular?

A: It is not true.

...

Q: Who does the plaintiff's plot share boundaries with?

A: Plot no. 139 shares boundary on the east with Kumbungu Main Road, north is an access road, south is plot no. 138 belonging to Prof. Aryee. The west is a residential plot.

...

Q: *Can you tell the court the dimensions of your plot?*

A: *I cannot tell.*

...

Q: *Because you do not know the boundary of your plot as well as you not being a surveyor, you cannot claim that defendant has encroached on your land?*

A: *If we are on the land physically, I can point where he has encroached.*

Q: *You agree with me that defendant built his house before you?*

A: Yes.

...

Q: *Plot 197 at Katariga Yapala is far from the disputed plot?*

A: *Yes. But the scheme for that area went under so many revisions. 139 is the final one that we have.*

...

Q: *Kindly tell the court when the first re-scheming was done?*

A: *I cannot tell exactly, but what I know is that plaintiff lived at Choggu Manayili behind Bishop JSS at the time of purchasing the plot.*

Q: *I am putting it to you that all these re-scheming was done after 1999?*

A: *I cannot tell but we acquired ours sometime in 2002."*

28. When the defendant was under cross-examination, below is what ensued:

"Q: You agree with me that you assisted the plaintiff to purchase the plot no. 139?

A: I bought plot for plaintiff, but regards to this plot number, I don't know anything about it.

Q: You agree with me that plaintiff has a structure on the plot you bought for him?

A: Yes.

Q: *I am suggesting to you that the plot number where the structure is, is on 139?*

A: *I don't know the number.*

...

Q: *You also agree with me that before you started building the stores, you moulded blocks for sale on it?*

A: *Yes, my house was in existence before I bought the plot for the plaintiff.*

...

Q: *You agree with me that because you were plaintiff's caretaker, plaintiff and his attorney rarely visited the plot?*

A: *Plaintiff and his attorney did not know where the land was located until they decided to build. Someone brought them to me and I showed them where the land was.*

Q: So in effect, you exercised control over that land?

A: Yes. I purchased the land for the plaintiff and I was also taking care of it for a very long time.

Q: You are also aware that the place has been rezoned severally during the time that you were taking care of it?

A: I am not aware of that

...

Q: *You also agree with me that the stores you built on portions of plot no. 139 was just recent?*

A: *That is not true. The stores in question has been in existence before I bought the land for plaintiff and the UDS lecturer."*

29. Lastly, with the surveyor's report, Exhibit CW1, the surveyor mapped out the buildings of each party. From Exhibit CW1, plaintiff's building is edged yellow and is found on plot nos. 138 and 141. That of defendant's building is red and found on plots 140 and 139. But, one can clearly see that the defendant's claim, edged cyan, has entered into plot no. 138, by a triangle. Below is what ensued when CEW was under cross-examination by counsel for defendant:

"Q: You agree with me that the cadastral plan submitted by the plaintiff did not conform to the local plan which was provided by the Physical Planning Officers?

A: Yes.

Q: In the cadastral plan provided by the plaintiff, it covers plot nos. 138, 139, 140 and 141 as the plots claimed by the plaintiff?

A: The plaintiff's cadastral plan shown is blue on the composite plan, it covers plot nos. 138, 139, 140 and 141. The green line was shown by the plaintiff during the disputed survey.

Q: *You agree with me that the cadastral plan provided by the plaintiff was different from what the plaintiff showed you during the survey?*

A: *That is so. But he admitted that the plot had been rezoned so he cannot exactly point the boundaries.*

Q: *Defendant was able to point his boundary for you during the survey?*

A: *Both parties showed me their boundaries.*

Q: *Per the local layout of the area, you agree with me that the defendant's boundary was in consonance with the local layout?*

A: *That is not entirely correct. The defendant building fell within plots 138, 139 and 140.*

Q: *The defendant informed you that he was also the owner of the plot no 140?*

A: *Yes*

...

Q: *And plaintiff showed you that the building was within his plot?*

A: *That is so. But he indicated that the building encroached a little of 138 which the owner of 138 is aware of.*

Q: *But you agree with me that his building fell entirely in 138 and a little of 141.*

A: *That is correct. The local plan as I indicated is compromised.*

Q: *You agree with me that the plot in dispute even falls far away from plaintiff's building which is edged yellow in Exhibit CW1?*

A: *There is a small gap between the disputed portion and the plaintiff's building which I earlier said is about 20feet.*

Q: *Can you tell the distance between the plaintiff's building on 138 as shown yellow and the disputed land as hatched red?*

A: *It will be about 10feet more or less.*

Q: *The 10feet cannot be absolute because it is triangular in nature?*

A: *The space between the two is not triangular.*

Q: *But you agree with me that the distance between the disputed plot hatched red and plaintiff's building marked yellow is not a uniform distance?*

A: *Yes, per the composite plan.*

Q: *99% of the disputed plot as hatched red falls on plots 139 and 140?*

A: *Majority portion of the disputed plot falls within the 139 and 140, but I can't state the percentage.*

...

Q: *You agree with me both parties are claiming plot no. 139, not so?*

A: *That is correct. The allocation letters both parties filed is for plot no. 139.*

Q: *However, plaintiff's building on the land is on plot no. 138?*

A: *The layout as has been compromised makes it difficult for me to answer the question.*

...

Q: Defendant already had his stores which is entirely in plot no. 139, that small red within the disputed area hatched red?

A: That is correct.

...

Q: *Tell the court, from the local plan and general layout for the area, the defendant's plan is in conformity of the disputed plot.*

A: *That is so as indicated on CW1.*

Q: *That is all."*

30. On the face of Exhibit CW1, I find that plaintiff's building is on plot nos. 138 and 141 (largely on plot no. 138). It comes no near plot nos. 140 and 139. Defendant claims plot nos. 140 and 139 as his. There is no doubt as to who owns plot no. 140. But the issue surrounds plot 139. Unfortunately for the plaintiff, I find that he is unable to clearly identify his land. In one breath he claims plot no. 139. In another breath, he has built on plot 138 and partly into plot no. 141. His initial or root of title was found as

defective, see Exhibit R. More so, as CEW puts it, the cadastral plan presented by the plaintiff did not conform to the local plan. In a question posed by counsel for the plaintiff regarding the physical/local plan and the cadastral plan, as to which takes precedence, CEW answered that it is the physical/local layout. This is what ensued:

“Q: The cadastral plan produced by your office and the site plan produced by the physical plan officer, which one takes precedence?

A: That of the physical planning officer or the local plan.”

31. In short, what the plaintiff presented as his cadastral plan did not conform to that of the physical/local plan. Hence, his assumption that plot no. 139 belongs to him is misplaced. In fact, plaintiff was unable to clearly identify the encroachment herein. A careful glance of where he (plaintiff) has his building, he comes no near plot no. 139 to which he claims. In effect, he has a wrong cadastral plan and also claiming a land which does not reflect what is on the local plan or on the grounds. Accordingly, I find that plaintiff was unable to prove that the disputed area hatched red belongs to him. Plaintiff’s claim, therefore, fails, see **Odametey v Clocuh (supra)**.

32. Finally, one can also see that defendant’s demarcation of his land, edged cyan has entered into plot no. 138, by a triangle. That, I will caution the defendant not to exceed the local plan of his plot nos. 140 and 139 as captured on Exhibit CW1. Accordingly, I will not determine whether or not the defendant has entered into plaintiff’s land since plot no. 138 has not been established as belonging to the plaintiff. The plaintiff to have his plot and document properly delineated to him.

CONCLUSION

33. In the circumstance, the plaintiff failed to prove on the balance of probabilities that plot no. 139 belongs to him. Accordingly, his action fails. Costs of GHS5,000.00 is awarded in favour of the defendant.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SYLVESTER ISANG ESQ. WITH LAMBONG SAMPSON ESQ. FOR PLAINTIFF
ALHAJI MOHAMMED S. ABDALLAH WITH ABRAHAM N. DAMTAR ESQ. FOR THE
DEFENDANT

References:

1. ss. 11(4), 12(1) and (2) and 14 of the Evidence Act, 1975 (NRCD 323)
2. *Faibi v State Hotels Corporation* [1968] GLR 471
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
4. *Sarkodie v FKA Company Ltd.* [2009] SCGLR 65
5. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC.
6. *Kodilinye v Odu* [1935] 2 WACA 336
7. *Osei v Korang* [2013] 58 GMJ
8. *Yehans International Ltd. v Martey Tsuru Family & Anor.* [2018] DLSC 2488
9. *Anane v. Donkor* [1965] GLR 188
10. *Nortey v. African Institute of Journalism and Communication* [2013-2014] 1 SCGLR 703
11. *Okine & Another v. Amoah VI* [2013-2014] 2 SCGLR 1358

12. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845 at page 867
13. *Majolagbe v. Larbi* [1959] GLR 190
14. *Klah v. Phoenix Insurance Company Limited* [2012] 2 SCGLR 1139